IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 15773 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

KESHAVLAL AMRATLAL PRAJAPATI - Petitioner(s)
Versus
THE STATE OF GUJARAT & 5 - Respondent(s)

==========

Appearance :

PARTY-IN-PERSON for Petitioner(s) : 1,
Mr. DABHI AGP for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 1, 4, 6,
MR KIRIT I PATEL for Respondent(s) : 1 - 3.
NOTICE SERVED BY DS for Respondent(s) : 3,
MR HARSHADRAY A DAVE for Respondent(s) : 5,

==========

CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 29/11/2007

ORAL JUDGMENT

1.Rule. Mr. Dabhi learned AGP waives service of

notice of rule. Matter is finally heard.

2. The petitioner party-in-person has challenged the order passed by the tribunal dated 1.6.2007 read with the order dated 23.5.2007 in Execution Application No. 4 of 2004 in Application No. 12 of 1995.

3. Heard party-in-person Mr. Keshavlal Amratlal Prajapati who is present, Mr. Dabhi learned AGP for the State authority, Mr. Kirit I Patel learned Counsel for respondent No. 2 and 3 and Mr. Dave learned Counsel for respondent No. 5 University.

4. It appears that there are dispute amongst the petitioner and the college authority. As per the petitioner he was entitled to commutation of the pension, leave encashment, the salary for the absent wrongly marked etc., during the period when he was working. Whereas as per the college authority the petitioner is not entitled for such benefits. When the tribunal disposed of the matter in Application No. 12 of 1995, the petitioner is conferred with the benefits of gratuity, GPF, leave encashment and other

benefits. Therefore, all such amount to which the petitioner is entitled is to be paid or not may be required to be examined by the tribunal in the execution proceedings. Since before the tribunal at the relevant point of time the petitioner could not produce calculation, it would be just and proper if the petitioner is permitted to move fresh execution application by submitting calculation and the same is decided by the tribunal after giving opportunity of hearing to the concerned parties and the appropriate order are passed.

5. Hence, following direction:

1. The petitioner shall be at liberty to file afresh execution application for execution of the order passed by the tribunal in Application No. 12 of 1995, but in the said application the petitioner shall give details of the calculation of the amount to which the petitioner is entitled and the amount which is actually paid to the petitioner and the remaining amount.

2. The tribunal shall entertain and decide the application in accordance with law, after giving

opportunity of hearing to all concerned as early as possible, preferably within a period of six months from the receipt of the application.

6. In view of the aforesaid directions, the impugned order passed by the tribunal for disposal of the execution application shall not survive and matter shall be considered afresh by the tribunal in the execution proceedings.

7. Petition is partly allowed to the aforesaid extent. Rule is made absolute accordingly. No order as to cost. Direct service is permitted.

(JAYANT PATEL,J.)

Suresh*